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All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.

-- Article 1, Section 1, New Jersey State Constitution

The Guarantee of the Right to Keep and Bear Arms

By Edwin Vieira, Jr., PhD, JD

...Thus, no free American needs any special reason, excuse, license, or permission to possess firearms or to go armed at home or in most public or private places, because these are not only constitutional rights, but also constitutional duties. The Constitution is every American's reason, license, and requirement to be armed. And therefore the notions that whole classes of firearms suitable for Militia service can be proscribed by giving them bad names, or that huge geographical zones can be carved out in which individuals can be prohibited from exercising and performing their constitutional rights and especially duties, dissolve in the acid of their own absurdity.

Now, no one can deny that proponents of the Second Amendment have done yeoman service in both courts and legislatures, defending and often even advancing "the right of the people to keep and bear Arms"--such as through legislation in many States that expands the right of private citizens to carry concealed handguns in public. Nonetheless, in contemporary judicial practice the Second Amendment constitutes something of a weak reed on which to lean while opposing prohibitions on the private possession of "bad-name guns", or the establishment of feel-good "gun-free zones". Every lawyer who has engaged in constitutional litigation knows that judges often allow the General Government and the States to abridge, infringe, violate, or otherwise set aside even rights the Supreme Court considers "fundamental" (including the freedoms of speech and of the press), if government lawyers can satisfy the

judges that there is some so-called "compelling interest" for doing so, and the means being employed are supposedly "least restrictive" of the right at issue.

This "compelling governmental interest test" (or "balancing test", as the courts often style it) is hopelessly incoherent, as Justice Hugo Black, dissenting, proved in the early decision in *Konigsberg v. State Bar of California*, 366 U.S. 36 (1961). An even more fundamental point than Black made in that case, though, is that any government's most "compelling" interest is to protect its citizens in the enjoyment of their lives, liberties, and property. Every citizen "owes [the government] allegiance and is entitled to its protection. Allegiance and protection are, in this connection, reciprocal obligations. The one is a compensation for the other; allegiance for protection and protection for allegiance." *Minor v. Happersett*, 88 U.S. (21 Wall.) 162, 165-66 (1875). Accord, *Luria v. United States*, 231 U.S. 9, 12 (1913). Absent protection from the government, no citizens owe allegiance to it; but absent citizens' owing allegiance to it, there can be no "government" at all, rightly understood, because a "government" without loyal citizens is a contradiction in terms. As the Declaration of Independence asserted in its indictment of King George III, "[h]e has abdicated Government here, by declaring us out of his Protection and waging War against us." So, how can there possibly ever be a more "compelling interest" that justifies abridging the government's most "compelling interest", upon the achievement of which its very existence and legitimacy depend?

Notwithstanding the self-contradictory nature of the "compelling

governmental interest test", the courts now routinely employ it. And inasmuch as they apply it even to the First Amendment--the constitutional provision most beloved by the legal *intelligentsia*, because it offers them the greatest range of opportunities for subverting, debasing, and generally corrupting America's culture--judges will certainly enforce it with even more gusto against the Second Amendment, which the legal *intelligentsia* despise, fear, and desire to destroy. Moreover, a "compelling government interest" and the "least-restrictive means" to achieve it are matters that judges themselves will decide, whilst recognizing no requirement for their decisions to rest on actual evidence, historical facts, objective standards, or even common sense.

-- Excerpt from "The Militia of the Several States" Guarantee the Right to Keep and Bear Arms, July 5, 2005

Firebomb attack on book publisher

The London home of the publisher of *The Jewel of Medina*, a controversial new novel that gives a fictionalised account of the Prophet Muhammad's relationship with his child bride, Aisha, was firebombed yesterday.

Three men have been arrested on terrorism charges.

Written by US journalist Sherry Jones, the book was due to have been published by US giant Random House. But amid controversy the company halted publication, a move denounced by Salman Rushdie, author of *The Satanic Verses*, as "censorship by fear".

Martin Rynja bought the UK publishing rights earlier this month.

"The Jewel of Medina has become an important barometer of our time," Rynja said at the time. "As an independent publishing company, we feel strongly that we should not be afraid of the consequences of debate."

The book, despite being described by one critic as "a rarity in Islamic-themed literature: an attempt by a Western woman to fictionalise the personal life of the Prophet and to bring to a wider audience one of the great feminist heroines of the Middle East", has attracted criticism. One sex scene has been described as "softcore pornography" by Denise Spellberg, an influential professor of Middle Eastern Studies at the University of Texas.

It appears Spellberg was instrumental in drawing attention to the book among segments of the Muslim community. Shahed Amanullah, an editor of a popular Muslim website, claimed Spellberg had told him the book "made fun of Muslims and their history".

Amanullah sent emails to Middle East and Islamic studies students, claiming: "Just got a frantic call from a professor who got an advance copy of the forthcoming novel Jewel of Medina - she said she found it incredibly offensive."

The resulting furore prompted Random House to pull the book. "To claim that Muslims will answer my book with violence is pure nonsense," Jones told a German newspaper last month. "Anyone who reads the book will see that it honours the Prophet and his favourite wife." She expressed anger at the political consequences of Random House's decision. "That one of the biggest publishing houses in the world refuses to publish a book because of warnings is a sobering comment on the state of freedom of speech in the USA," she said.

-- The Observer, Sept. 28, 2008

Some CHANGE We Can Do Without

Barak Obama has supported:

- *A total ban on handguns
 - *A ban on the sale or transfer of all semi-auto firearms
 - *A ban on right-to-carry permits
 - *A ban on firearms kept in the home
 - *And much, much more
- Don't risk your rights! Register to vote today!

-- www.NSSF.org/Register ad in *Outdoor Life*, October 2008

* * *

Barak Obama's Ten Point Plan to "Change" The Second Amendment

1. Ban the use of firearms for home defense.
2. Pass Federal laws eliminating your Right-to Carry.
3. Ban the manufacture, sale and possession of handguns.
4. Close down 90% of the gun shops in America.
5. Ban rifle ammunition commonly used for hunting and sport shooting.
6. Increase federal taxes on guns and ammunition by 500 percent.
7. Restore voting rights for five million criminals including those who have been convicted of using a gun to commit a crime.
8. Expand the Clinton semi-auto ban to include millions more firearms.
9. Mandate a government issued license to purchase a firearm.
10. Appoint judges to the U.S. Supreme Court and Federal judiciary who share his views on the Second Amendment.

-- National Rifle Association

* * *

Democrats to Gun Owners: 'The Party Is Over'

By Alan Gottlieb and Dave Workman

After Democrats lost Congress in 1994 because their actions brought legions of angry gun owners to the polls, the party re-packaged its rhetoric and tried to sell itself as a friend of the Second Amendment. American gun owners, who are increasingly becoming gun rights activists, are not the fools Democrats think they are. As we note in our new book *These Dogs Don't Hunt: the Democrats' War on Guns*, Democrats earned their reputation as being the party of gun control. Instead of rhetoric, they need to repudiate their long-standing animosity toward gun owner rights.

The party platform tries to patronize gun owners by claiming to "recognize that the right to bear arms is an important part of the American tradition, and we will preserve Americans' continued Second Amendment right to own and use firearms." But then the document quickly reveals that Democrats have changed their tune but not their agenda: "We can work together to enact and enforce common-sense laws and improvements, like closing the gun show loophole, improving our background check system and reinstating the assault weapons ban..."

Gun owners know "common-sense laws" include licensing,

registration and a surrender of the "right to carry" to the discretionary whims of police chiefs and sheriffs.

The party chose Obama as its standard-bearer. He once served on the board of the vehemently anti-firearms civil rights Joyce Foundation. During his first run for public office he supported a ban on the manufacture, sale and possession of handguns and semi-automatic rifles. He supports mandatory waiting periods on all gun purchases. He told the Pittsburgh *Tribune-Review* in April that "I am not in favor of concealed weapons," insulting millions of armed citizens who care about self-defense in the process.

Gun owners know [Obama's running mate] Biden as an anti-gun extremist. He consistently earns "F" ratings from gun rights organizations. He claimed credit for writing the original legislation to ban semiautomatic sport-utility rifles that are owned by millions of Americans who have harmed nobody.

The proverbial last straw for the firearms community was Obama's remark during his acceptance speech that "The reality of gun ownership may be different for hunters in rural Ohio than for those plagued by gang-violence in Cleveland, but don't tell me we can't uphold the Second Amendment while keeping AK-47s out of the hands of criminals."

The "reality" is that gun rights are the same for everyone, no matter where they live. And gun owners know from experience that Democrats falsely believe that the only way to keep guns away from criminals is to oppressively regulate gun ownership for everyone.

Mr. Obama told his faithful that Sen. McCain "doesn't get it." Actually, Democrats "don't get it." You do not woo people by treating them like criminals, and you cannot "support" someone's civil right at the same time you regulate it to irrelevancy.

-- Second Amendment Foundation Alert September 12, 2008

* * *

Last week the U.S. House of Representatives overwhelmingly voted to pass a bill repealing the D.C. gun ban (HR 6842).

But Senate Majority Leader Harry Reid is trying to use procedural maneuvers to keep the bill from coming to the Senate floor for a vote.

Without a vote in the Senate, it becomes clear that the House vote was an election year ploy... a deal cut by two anti-gunners: House Speaker Nancy Pelosi and Senate

In the beginning of change the patriot is a scarce man, brave, hated and scorned. When his cause succeeds, however, the timid join him, for then it costs nothing to be a patriot. - Mark Twain

Majority Leader Harry Reid.

Put another way, the House vote merely provides "cover" for many "F" rated Democrats.

After all, 47 congressmen who voted in favor of the bill are rated "F" by Gun Owners of America. Included in this number are three Democrats who are running for open U.S. Senate seats (Tom Udall in New Mexico, Mark Udall in Colorado and Tom Allen in Maine).

Four congressmen who voted to repeal D.C.'s gun laws also cosponsored a bill to ban so-called assault weapons!

So after giving "F" rated Democrats in the House a chance to vote pro-gun, the Democrat leadership is keeping the Senate from voting on the bill (to prevent the bill from being signed into law by the President).
-- GOA E-mail Alert September 22, 2008

* * *

...Speaking of judges, [Republican presidential nominee] John McCain voted for pro-abortion [and anti-Second Amendment] Supreme Court justices Stephen Breyer and radical, pro-abortion, [and anti-Second Amendment] ACLU attorney, Ruth Bader Ginsburg. So much for the argument that we need John McCain for the sake of appointing conservative justices to the Supreme Court.

John McCain also gave us McCain-Feingold. This is the law that keeps pro-life or pro-Second Amendment organizations from broadcasting ads that mention a candidate by name 30 days before a primary election or 60 days before a general election. This proves that John McCain believes neither in the right to life nor the right to keep and bear arms [nor the First Amendment right to free speech]. (This is one reason why the Gun Owners of America gives McCain a grade of F.)

John McCain also supports the United Nations, which not only works to strip the United States of its independence and sovereignty, and banish our right to keep and bear arms, but is also the most radical, pro-abortion organization in the entire world. More babies have been aborted around the world under the auspices of the U.N. than any other single entity.
-- www.chuckbaldwinlive.com, August 22, 2008

McCain's Constitution

By George Will

Presidents swear to "protect and defend the Constitution." The

Constitution says: "Congress shall make no law... abridging the freedom of speech." On April 28, on Don Imus' radio program, discussing the charge that the McCain-Feingold law abridges freedom of speech by regulating the quantity, content and timing of political speech, John McCain did not really reject the charge:

"I work in Washington and I know that money corrupts. And I and a lot of other people were trying to stop that corruption. Obviously, from what we've been seeing lately, we didn't complete the job. But I would rather have a clean government than one where quote First Amendment rights are being respected that has become corrupt. If I had my choice, I'd rather have the clean government."

Note the obvious disparagement he communicates by putting verbal quotation marks around "First Amendment rights." Those nuisances.

Then ponder his implicit promise to "complete the job" of cleansing Washington of corruption, as McCain understands that. Unfortunately, although McCain is loquacious about corruption, he is too busy deploring it to define it. Mister Straight Talk is rarely reticent about anything, but is remarkably so about specifics: He says corruption is pandemic among incumbent politicians, yet he has never identified any corrupt fellow senator.

He vows to "complete the job", regardless of the cost to freedom of speech. Regardless, that is, of how much more the government must supervise political advocacy. President McCain would, it is reasonable to assume, favor increasingly stringent limits on what can be contributed to, or spent by, campaigns. Furthermore, McCain seems to regard unregulated political speech as an inherent invitation to corruption. And he seems to believe that anything done in the name of "leveling the playing field" for political competition is immune from First Amendment challenges.

The logic of his doctrine would cause him to put the power of the presidency behind efforts to clamp government controls on Internet advocacy. This is because the speech regulators' impulse is increasingly untethered from concern with corruption. It is extending to regulation in the name of "fairness." Bob Bauer, a Democratic lawyer, says this about the metastasizing government regulation of campaigns:

"More and more, it is meant to regulate any money with the potential of influencing elections; and so any

unregulated but influential money, in whichever way its influence is felt or achieved, is unfair. This explains the hand-wringing horror with which the reform community approached the Internet's fast-growing use and limitless potential."

This is why the banner of "campaign reform" is no longer waved only by insurgents from outside the political establishment. Washington's most powerful people carry the banner: Led by Speaker Dennis Hastert, and with the president's approval, the Republican-controlled House recently voted to cripple the ability of citizens' groups called 527s (named after the provision of the tax code under which they are organized) to conduct independent advocacy that Washington's ruling class considers "unfair."

Which highlights the stark contradiction in McCain's doctrine and the media's applause of it. He and they assume, simultaneously, the following two propositions:

Proof that incumbent politicians are highly susceptible to corruption is the fact that the government they control is shot through with it. Yet that same government should be regarded as a disinterested arbiter, untainted by politics and therefore qualified to regulate the content, quantity and timing of speech in campaigns that determine who controls the government. In the language of McCain's Imus appearance, the government is very much not "clean," but is so clean it can be trusted to regulate speech about itself.

McCain favors judges who think the Constitution is so radically elastic that government regulation of speech about itself is compatible with the First Amendment. So Republican primary voters will wonder: Can President McCain be counted on to nominate justices who would correct such constitutional elasticities as the court's discovery of a virtually unlimited right -- one unnoticed between 1787 and 1973 -- to abortion?

McCain told Imus that he would, if necessary, sacrifice "quote First Amendment rights" to achieve "clean" government. If on Jan. 20, 2009, he were to swear to defend the Constitution, would he be thinking that the oath refers only to "the quote Constitution"? And what would that mean?

-- George F. Will is a 1976 Pulitzer Prize winner, whose columns are syndicated in more than 400 magazines and newspapers worldwide.

The Abuse of "ex parte" proceedings

Ex parte proceedings have come under attack because of the inherent unfairness and intrinsic due process abrogation brought on by such a nefarious procedure. The Family Courts in particular are notorious for employing ex parte hearings on so called "emergency" principles to grant restraining orders to disgruntled spouses who obtain them via perjury and fraud to enact vendetta against spouses and lovers.

Simply put, ex parte proceedings pervert the intent of the law by using them as a sword instead of a shield. In the landmark case *Coy vs. Iowa* the U.S. Supreme Court ruled that the right to face your accuser is a literal right, meaning you must be able to look him or her in the eye. Writing for the majority, Justice Scalia stated the obvious truth that it is much easier to fabricate lies about someone if that individual is not present.

Ed.: Ex parte: a judicial proceeding, order, injunction, etc., is said to be ex parte when it taken or granted at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested. -- Black's Law Dictionary

Why lobbyists lobby

(W)e ought to be asking ourselves why corporations and interests groups are willing to give politicians millions of dollars in the first place. Obviously their motives are not altruistic. Simply put, they do it because the stakes are so high. They know government controls virtually every aspect of our economy and our lives, and that they must influence government to protect their interests.

Our federal government, which was intended to operate as a very limited constitutional republic, has instead become a virtually socialist leviathan that redistributes trillions of dollars. We can hardly be surprised when countless special interests fight for the money. The only true solution to the campaign money problem is a return to a proper constitutional government that does not control the economy. Big government and big campaign money go hand in hand. -- Rep. Ron Paul, "Texas Straight Talk," Feb. 4, 2002

The Bailout

By Murray Sabrin, PhD

Why do the political and financial elites want a federal

government bailout--"rescue"--of failing financial institutions? They want to preserve fiat money and the fractional reserve banking system. Without government protection, the market would rid the system of paper money and a fractional reserve banking system. The market relies on freedom and property rights to function properly so prosperity can be created the old fashioned way, via savings and investment. Instead, the elites want the current financial and monetary system to perpetuate the welfare-warfare state, welfare for as many people as possible so they will continue to support big government. And of course the elites want as much military spending as possible to funnel money into the military-industrial complex, the welfare sector for the politically well connected companies, consulting firms and individuals.

Take away the federal government's ability to print money and the banking system's leveraging of newly created dollars which are injected into the economy to stimulate production and consumption, and society would have to rely on real savings and capital instead of the Fed's legalized counterfeiting.

The sides are drawn as clearly as possible, Main Street versus the elites. So far, we have not heard one billionaire criticize the planned bailout.

** Who would have dreamed that when socialism finally came to the U.S.A. it would be brought not by Bolsheviks in blue jeans but Wall Street bankers in Gucci loafers? Maureen Dowd, NY Times, Sept. 28*

Where teachers carry a pen, a ruler...and a gun

When teachers return to school in the tiny Texas farming town of Harrold, they can bring an extra tool of the trade alongside books, pens and worksheets. To defend pupils from any gun-toting maniacs, they can carry loaded pistols into the classroom.

The rural community has appalled gun control advocates by becoming the first in the US to allow its teachers to bear concealed firearms.

Harrold's school board maintains that the move is necessary because the town is 25 miles from the nearest sheriff's office, making it hard to get swift help in an emergency. Its location just yards from a major highway, Interstate 287, makes it a potential "target" for armed maniacs.

"We are 30 minutes from law enforcement," Harrold's school superintendent, David Thweatt, told the

Guardian. "How long do you think it would take to kill all 150 of us? It would be a bloodbath."

Carefully selected teachers are to be trained in crisis management including handling hostage situations. Thweatt said: "When you have good guys with guns, the bad guys do less damage."

More than a dozen mass shooting tragedies have hit US educational establishments over a decade, including the Columbine high school massacre in Colorado which claimed 15 lives in 1999 and last year's Virginia Tech massacre which left 33 people dead. The powerful pro-gun lobby often argues that Congress sent out a message of vulnerability in a 1990 law which banned guns in schools - although the law was declared unconstitutional and overturned by the Supreme Court five years later.

"We've had a very disturbing trend of school shootings in the US," said Thweatt. "It is my belief this is caused by making schools gun-free zones. When schools were made gun-free zones, they became targets for people who wanted to rack up the body count."

But teachers' unions in Texas have expressed horror.

"It's a disaster waiting to happen," Gayle Fallon, president of the Houston Federation of Teachers said. She described it as the sort of manoeuvre that makes Texas a laughing stock: "It's up there with the worst ideas in the history of education."

Harrold's gun policy was praised by the pro-gun nationwide Citizens Committee for the Right to Keep and Bear Arms. Its chairman, Alan Gottlieb, said the town's school buildings would be safer: "Allowing armed staff and teachers will provide a last line of defence if other security measures at the school fail."

He argued that teachers would be able to respond faster to a classroom shooting than a security guard: "Officers can't be everywhere and in an emergency, every second counts."

Harrold's school board is unapologetic about the controversy. Thweatt said the thick brick walls of Harrold's school protected pupils from tornadoes - and the school authorities had a duty to protect children from human attacks.

-- *The Guardian UK*, August 18, 2008

Judicial Immunity vs. Due Process: When Should a Judge Be Subject to Suit

By Robert Craig Waters

In the American judicial system, few more serious threats to individual liberty can be imagined than a corrupt judge. Clothed with the power of the state and authorized to pass judgment on the most basic aspects of everyday life, a judge can deprive citizens of liberty and property in complete disregard of the Constitution. The injuries inflicted may be severe and enduring. Yet the recent expansion of a judge-made exception to the landmark Civil Rights Act of 1871, chief vehicle for redress of civil rights violations, has rendered state judges immune from suit even for the most bizarre, corrupt, or abusive of judicial acts. In the last decade this "doctrine of judicial immunity" has led to a disturbing series of legal precedents that effectively deny citizens any redress for injuries, embarrassment, and unjust imprisonment caused by errant judges. Consider the following examples.

* In 1978, the Supreme Court in *Stump v. Sparkman* held that the doctrine forbade a suit against an Indiana judge who had authorized the sterilization of a slightly retarded 15-year-old girl under the guise of an appendectomy. The judge had approved the operation without a hearing when the mother alleged that the girl was promiscuous. After her marriage two years later, the girl discovered she was sterile. (It should be noted that the doctrine of judicial immunity from federal civil rights suits dates only from the 1967 Supreme Court decision in *Pierson v. Ray* (386 U.S. 547), which found a Mississippi justice of the peace immune from a civil rights suit when he tried to enforce illegal segregation laws. Until this time, several courts had concluded that Congress never intended to immunize state-court judges from federal civil rights suits. See, for example, *McShane v. Moldovan*, 172 F.2d 1016 (6th Cir. 1949). 2435 U.S. 349 (1978). 461)

* In 1980, the Seventh Circuit Court of Appeals in *Lopez v. Vanderwater* held a judge partially immune from suit for personally arresting a tenant who was in arrears on rent owed the judge's business associates. At the police station, the judge had arraigned the tenant, waived the right to trial by jury, and sentenced him to 240 days in prison. Six days of this sentence were served before another judge intervened. The Seventh Circuit found the judge immune for

arraigning, convicting, and sentencing the tenant but not for conducting the arrest and "prosecution."

* In 1985, the Eleventh Circuit Court of Appeals held in *Dykes v. Hosemann* that the immunity doctrine required dismissal of a suit against a Florida judge who had awarded custody of a child to its father, himself the son of a fellow judge. This "emergency" order had been entered without notice to the mother or a proper hearing when the father took the boy to Florida from their Pennsylvania home after a series of marital disputes.

* In 1985, the Tenth Circuit Court of Appeals in *Martinez v. Winner* held a federal judge immune who, during a trial, had conducted a secret meeting with prosecutors without notifying the defendant or his attorneys. Expressing concern that the jury would be "intimidated" into a not-guilty verdict, the judge agreed to declare a mistrial after the defense had presented its case so the government could prosecute anew with full knowledge of the defense's strategies.

In just 20 years, these precedents and others like them have established near-total judicial immunity as a settled feature of American law. Under the current doctrine, any act performed in a "judicial capacity" is shielded from suit. Thus, the simple expedient of disguising a corrupt act as a routine judicial function guarantees immunity from suit. In no other area of American life are public officials granted such license to engage in abuse of power and intentional disregard of the Constitution and laws they are sworn to defend.

Those who are harmed, no matter how extensive and irreparable the injury, are deprived of any method of obtaining compensation. They are confined to disciplinary actions that only rarely result in the judge's removal from office despite the troubling frequency of judicial abuses.

As will be shown below, this sweeping new immunity doctrine is at odds both with American legal history and the Constitution. Congress never intended to exempt state judges from suit when it passed the 1871 Civil Rights Act. Moreover, the judiciary is wrong when it asserts that immunity was a settled doctrine, incorporated into the 1871 Act by implication. To the contrary, the doctrine in its present form did not exist in the United States or England when the civil rights legislation was passed in 1871. Moreover, the immunity doctrine is inconsistent with the due process clause of the Fourteenth Amendment. Even if the doctrine had

existed in common law, constitutional supremacy dictates that it must bow before the American idea of procedural justice embodied in the guarantee of due process.

-- Cato Journal, Vol.7, No.2 (Fall 1987). The author is Judicial Clerk to Justice Rosemary Barkett of the Florida Supreme Court.

How to Remove a Federal Judge

By Saikrishna Prakash and Steven D. Smith

Abstract. Most everyone assumes that impeachment is the only means of removing federal judges and that the Constitution's grant of good-behavior tenure is an implicit reference to impeachment. This Article challenges that conventional wisdom. Using evidence from England, the colonies, and the revolutionary state constitutions, the Article demonstrates that at the Founding, good-behavior tenure and impeachment had only the most tenuous of relationships. Good-behavior tenure was forfeitable upon a judicial finding of misbehavior. There would have to be a trial, the hearing of witnesses, and the introduction of evidence, with misbehavior proved by the party seeking to oust the tenured individual. Contrary to what many might suppose, judges were not the only ones who could be granted good-behavior tenure.

Anything that might be held—land, licenses, employment, etc.—could be granted during good behavior, and private parties could grant good-behavior tenure to other private individuals.

Impeachment, by contrast, referred to a criminal procedure conducted in the legislature that could lead to an array of criminal sanctions. In England and in the colonies, impeachment was never seen as a means of judging whether someone with good-behavior tenure had forfeited her tenure by reason of misbehavior. Whether a landholder, employee, or government officer with good-behavior tenure had misbehaved would be determined in the ordinary courts of law. Moreover, the vast majority of state constitutions did not equate good-behavior tenure with impeachment either. To the contrary, many distinguished them explicitly. Taken together, these propositions devastate the conventional conflation of good-behavior tenure with impeachment. More importantly, they indicate that the original Constitution did not render impeachment the only possible means

of removing federal judges with good-behavior tenure. Given the long tradition of adjudicating misbehavior in the ordinary courts, Congress may enact necessary and proper legislation permitting the removal of federal judges upon a finding of misbehavior in the ordinary courts of law.

-- Saikrishna Prakash and Steven D. Smith are law professors at the University of San Diego.

FBI to Get Freer Rein to Gather Domestic Information

Washington - Attorney General Michael Mukasey confirmed plans Wednesday to loosen restrictions on the FBI's national security and criminal investigations, saying the changes were necessary to improve the bureau's ability to detect terrorists.

Mukasey said he expected criticism of the new rules because "they expressly authorize the FBI to engage in intelligence collection inside the United States."

Mukasey said the new rules "remove unnecessary barriers" to cooperation between law enforcement agencies and "eliminate the artificial distinctions" in the way agents conduct surveillance in criminal and national security investigations.

Agents currently can rely on informants to gather information in criminal investigations, but are more limited in national security cases. The new rules will do away with those differences.

In addition, agents assigned to national security investigations will be given more latitude to conduct surveillance based on a tip. Also, agents will be permitted to search more databases than allowed previously in criminal cases.

The Justice Department is expected to publicly release the final version within several weeks. Even then, portions are expected to remain classified for national security reasons.

Michael German, a former FBI agent who is now policy counsel for the American Civil Liberties Union, said if Mukasey moves ahead with the new

rules, he'll be weakening restrictions originally put in place to rein in the FBI's domestic Counter Intelligence Program, or COINTELPRO, when the FBI spied on American political leaders and organizations deemed to be subversive in the late 1950s and into the 1960s.

German said Mukasey "talks about 'arbitrary or irrelevant differences' between criminal and national security investigations but these were corrections originally designed to prevent the type of overreach the FBI engaged in for years."

The Justice Department's IG has found that between 2003 and 2006 the FBI sought personal records of Americans by relying improperly on so-called "national security letters", rather than seeking court approval. Last week, the FBI apologized to two newspapers for secretly obtaining reporters' phone records without following proper bureau procedures.

German said recent events demonstrated that Mukasey needed to strengthen the FBI's guidelines, not "water them down."

-- McClatchy Newspapers, August 13 2008

Gumption and the Gang of 535

By Charlie Reese

Politicians are the only people in the world who create problems and then campaign against them.

Have you ever wondered why, if both the Democrats and the Republicans are against deficits, we have deficits?

Have you ever wondered why, if all the politicians are against inflation and high taxes, we have inflation and high taxes?

One hundred senators, 435 representatives, one president, and nine Supreme Court justices! 545 people out of 300 million are directly, legally, morally, and individually responsible for the problems that plague this country.

I excluded the members of the Federal Reserve Board because it was

created by Congress. In 1913 Congress delegated its Constitutional duty to provide a sound currency to a federally chartered, but private, central bank.

I excluded the lobbyists because they have no ability to coerce a Senator, a Representative, or a President to do one cotton-picking thing. No matter what the lobbyist seeks, it is the legislator who determines how he votes.

What separates a politician from a normal human being is an excessive amount of gall. No normal person would have the gall of a Speaker of the House, who criticized the President for creating deficits. The President can only propose a budget. He cannot force the Congress to accept it. The Speaker and the House of Representatives can approve any budget they want. If the president vetoes it, they can pass it over his veto.

It seems inconceivable that a nation of 300 million can not replace 545 people who stand convicted -- by present facts -- of incompetence and irresponsibility. When you fully grasp the plain truth that 545 people exercise the power of the federal government, then it must follow that what exists is what they want to exist. If the tax code is unfair, the budget is in the red and the Marines are in Iraq, it's because they want it that way.

Do not let these 545 people shift the blame to bureaucrats, whose jobs they can abolish; to lobbyists, whose gifts they can reject; to regulators, from whom they can take that power. Above all, do not let them con you into the belief that there exists disembodied mystical forces like 'the economy,' 'inflation,' or 'politics' that prevent them from doing what they take an oath to do.

Those 545 people, and they alone, have the power. They, and they alone, should be held accountable by the people who are their bosses, provided the voters have the gumption to manage their own employees.

-- Charlie Reese is a former columnist of the Orlando *Sentinel*

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